IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3527 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MENA PARK COOPERATIVE HOUSINGSOCIETY LTD.

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioner

MR ND GOHIL, AGP, for Respondent No. 1, 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/06/2000

ORAL JUDGEMENT

1. The petitioner herein is a co-operative housing society constituted by Government employees, who applied for purchase of 2642 sq. metres of excess land forming part of Survey No.415/1 of Chandkheda. The said application was give on the 16th June, 1992. That piece

of land originally belonged to one Dharmendrakumar Patel and, after due proceedings, was declared as excess vacant land. The possession of the land, after following due procedure, was taken by the Government after issuing notification under Section 19(3) of the Urban Land (Ceiling and Regulation) Act, 1976. Prior to that, the proceeding were challenged before this Court in Special Civil Application No.2971 of 1989, which came to be withdrawn with permission of the Court. The Government is agreeable to sell this land to the society and the price is fixed at Rs.900/- per sq. meter. To these facts, there is no dispute between the parties.

2. The real dispute that is raised before this Court is that the Government did not take decision on the application of the petitioner dated the 16th June, 1992 till 1999. Now the price is fixed at Rs.900/- per sq. metre, according to current rates. This demand of the Government is, therefore, prejudicial to the interest of the society. If the Government had taken a decision and fixed the price within reasonable time, the price would have been much lower. It is, therefore, contended that the price that is determined is unreasonable, high and it may be brought down by this Court to Rs.400/- per sq. metre or Rs.600/- per sq. metre, as recommended by the then Minister of Law and Revenue by his direction dated December 10, 1997.

3. Mr. Vyas, learned advocate appearing for the petitioner, has reiterated the above facts. He submitted that it is expected of the Government machinery to move at a reasonable pace and the decision on the application of the petitioner-society ought to have been taken within four to six months. If that was taken, the price could have been determined as prevailing in the market at that point of time. He submitted that there is no dispute so far as the sale of the land is concerned, the dispute is only regarding the price. Following initial order passed by this Court on May 11, 1999 (Coram: Kundan Singh, J.) directing the Government to allot the land on the petitioner depositing Rs.400/- per sq. metre, the petitioner has already deposited an amount of Rs.10,56,800/-. He submitted that the amount was deposited in instalments and last such instalments was deposited on the 16th June, 1999. Even after depositing the amount, the Government has not taken any decision or has not allotted the land. Mr. Vyas, therefore, urged that the petition may be allowed.

4. Mr. Gohil, learned Assistant Government Pleader, has opposed this petition. He submitted that the price

is fixed according to the market rate. Some time is likely to elapse in the Government machinery because of the procedure required to be followed. He submitted that while entertaining this petition, this Court may not determine the price. He submitted further that, although there is some delay in determining the price, the interest of the petitioner is not prejudiced because of the recession. He submitted that the prices have substantially come down because of the recession and, therefore, the determination of the price in 1999 cannot be said to have affected the interest of the petitioner. He, therefore, submitted that the petition may be dismissed.

5. Having regard to rival side contentions, it may be noted that in exercise of jurisdiction under Article 226 of the Constitution, this Court is not supposed to enter into the arena of assessing the value/price of the land in question. This Court has only to examine if the Government machinery has properly followed the procedure and has conducted itself through a legal and proper channel.

6. In the instant case, the respondents do not question the right of the petitioner of getting the land. The respondents have shown their willingness to sell the land to the petitioner-society. The application for purchase of land was given way back on the 16th June, 1992 and, as can be seen from the affidavit in reply filed on behalf of the respondents, the price is determined as prevailing in 1999. This slow and sluggish movement of the Government machinery cannot be permitted to prejudice the interest of the petitioner. It would be improper and unreasonable to acknowledge such a long delay of about seven years in determining the price of the land in question. Some concession can be given to the Government machinery for the procedural delays. But lapse of seven years is too inordinate to be considered as reasonably ascribable to procedural delays. Under the circumstances, the determination of price according to the market rate prevailing in 1999 and expecting the petitioner to pay that price can be considered as unreasonable. It is interesting to note that even, according to the then Minister, the price per sq. metre of land was fixed at Rs.600/- and overriding that direction, a demand at Rs.900/- per sq. metre is made from the petitioner.

7. The fixation of the price has to be made on the date of allotment. However, in the instant case, the date of allotment will not have to be taken into

consideration for the reason that there was inordinate delay in considering the petitioner's application. In this regard, the decision in the case of Ashutosh Sarkari Karmachari Co-op. Housing Society Ltd. v. State of Gujarat & Anr., 1995(2) 1419, may be referred to. In that case, the petitioner-society had applied for land for constructing houses of its members and the price fixed for the land to be allotted to that society was fixed at Rs.800/- per sq. metre. It was found that the price at which the land was allotted other similarly situated societies around the time in which the petitioner-society in that case made application was around Rs.450/- per sq. metre. In light of that situation the Court set aside the fixation of price of the land to be allotted to the petitioner-society at Rs.800/- per sq. meter and the matter was remanded to the State Government for its fresh decision according to law, in light of the aforesaid reported ruling. The said decision was followed by this Court in Shivkrupa Co-operative Housing Society Ltd. v. State of Gujarat, in Special Civil Application No.308 of 1995, decided on August 30, 1996 (Coram: A.N. Divecha, J.) and again in the case of H.P. Joshi, Secretary of proposed Banshari Sarkari Karmachari Co-op. Housing Society Ltd. v. State of Gujarat in Special Civil Application No.2459 of 1999, decided on June 29, 1999 (Coram: Y.B. Bhatt, J.). This Court is informed that these decisions have not been challenged and hold the ground as on today. In this view of the matter, the petition deserves to be allowed to the extent of quashing and setting aside the demand of Rs.900/- per sq. metre for the land in question.

8. Now comes the question as to what could be considered as reasonable time for fixing the price that can be taken by the Government. In this regard, there cannot be any hard and fast guideline, but it would be reasonable, if period of about 8 to 12 months is given for the Government machinery to follow the procedure and fix the price. The application was given on the 16th June, 1992 and it would be reasonable to expect the Government machinery to react to it within a period of 8 to 12 months. Therefore, the price that can be fixed is only the market price that could be prevailing around that time.

9. Considering the facts and circumstances of the case, it would be just and equitable to direct the respondents to fix the market price of the land in question prevailing around June 1993. The respondents are, accordingly, directed.

10. The petition is, therefore, partly allowed. Rule is made absolute to that extent with no orders as to costs.

[A.L. DAVE, J.]

gt